

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

AMAZON.COM, INC and AMAZON DATA SERVICES, INC.,)	Case No. 1:20cv484
Plaintiffs,)	Hon. Rossie D. Alston, Jr.
v.)	Hon. Theresa Buchanan
WDC HOLDINGS LLC d/b/a NORTHSTAR COMMERCIAL PARTNERS, et al.,)	
Defendants,)	DEFENDANTS CARLETON NELSON'S AND CHESHIRE VENTURES LLC'S MOTION FOR LEAVE TO FILE SURREPLY TO ADDRESS AMAZON'S ARGUMENTS CONCERNING RULE 16, RULE 20 AND ITS NEW BREACH OF CONTRACT CLAIM
800 HOYT LLC,)	
Intervening Interpleader Plaintiff,)	
v.)	
BRIAN WATSON, WDC HOLDING LLC, PLW CAPITAL I, LLC.AMAZON.COM, INC, and AMAZON DATA SERVICES, INC.)	EXPEDITED CONSIDERATION REQUESTED WITHOUT ORAL ARGUMENT
Interpleader Defendants.)	
)	

COME NOW Defendants Carleton Nelson and Cheshire Ventures, LLC (the “Nelson Defendants”) through undersigned counsel, and file this motion for leave to file a six (6) page surreply to Amazon’s reply in support of its motion to file a third amended complaint (1) because the reply includes a fulsome discussion of Rule 16, citing many more cases than Amazon originally felt necessary to support its motion under Rule 16; (2) to address Amazon’s baseless claim that it has shown it satisfied the requirements of Rule 20 for joinder of new parties where it does not actually make any argument that the addition of new parties will not delay resolution of the case

and where Amazon failed to even mention Rule 20 in its opening brief; and (3) to address Amazon's unsupported assertion that it previously asserted a breach of contract claim against Nelson based on its own delivery of a hard drive Amazon asserts it did not even know had occurred when it filed the earlier complaints in this action. Nelson could not anticipate an argument that Amazon had already brought a breach of contract claim against him arising from facts related to the hard drive Amazon acknowledges it was unaware of at the time it filed its last complaint. This assertion by Amazon that it had already brought a breach of contract claim related to the retention of the hard drive is all the more confusing and unforeseeable when Amazon's counsel in several communications threatened to bring a claim against Nelson for having possession of the hard drive after Amazon delivered it to him, *see* Doc. 722-1 at 9 (raising several alleged violations Amazon claims Nelson committed by possessing the hard drive) and 13 (requiring Nelson to answer a series of question regarding the hard drive "to resolve [the hard drive issue] without litigation.").

Local Rule 7(F) requires leave of the Court to file such a surreply. "Surreplies may be appropriate when the party seeking to file a surreply 'would be unable to contest matters presented to the court for the first time in the opposing party's reply.'" *Carrasco v. M&T Bank*, No. CV SAG-21-532, 2021 WL 4846844, at *8 (D. Md. Oct. 18, 2021) (*Khoury v. Meserve*, 268 F. Supp. 2d 600, 605 (D. Md. 2003)). Here Amazon made extremely limited arguments under Rule 16 and no arguments under Rule 20 in its initial brief, despite bearing the burden of proof, meaning Defendants had to anticipate what Amazon might argue on those topics. Further, Nelson could not predict Amazon would attempt to sidestep the issue of futility as to the new breach of contract claim against Nelson by asserting it is not in fact a new breach of contract claim, even when Amazon asserts it was unaware of the hard drive when it filed its last complaint.

Attached hereto as Exhibit A is the proposed surreply the Nelson Defendants request the Court permit them to file. Under Local Rule 7(J) the Nelson Defendants request the Court decide this motion without oral argument.

May 4, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2022, a true and correct copy of the foregoing has been served upon the following via email:

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Dated: May 4, 2022

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